

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

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PLR-112379-19

Date:

May 21, 2020

Taxpayer =

Decedent =

Trust T =

Subtrust S =

IRA D =

Date 1 =

Date 2 =

State E =

Dear :

This letter responds to your request dated May 16, 2019, as supplemented by correspondence dated December 17, 2019, and March 3, 2020, submitted on your behalf by your authorized representative, in which you request rulings under sections 408(d) and 691 of the Internal Revenue Code.

The following facts and representations were submitted under penalties of perjury in support of the requested rulings:

Trust T was established by Decedent and Taxpayer (husband and wife) on Date 1. On Date 2, Decedent died. At the time of Decedent's death, Decedent owned IRA D. The sole beneficiary of IRA D was Trust T. Decedent and Taxpayer live in State E, which is a community property state. It is represented that IRA D is community property under the laws of State E.

The terms of Trust T provide that upon the death of Decedent, Taxpayer becomes the sole trustee of Trust T and all subtrusts within Trust T, including Subtrust S. The terms of Trust T also provide that upon Decedent's death, Taxpayer's interest in community property (including her interest in IRA D) and Taxpayer's separate property are to be allocated to Subtrust S.

The terms of Subtrust S provide that during the life of Taxpayer, Taxpayer is the sole current income and principal beneficiary of Subtrust S and is entitled to receive as much of the income or principal as Taxpayer requests, for any reason or purpose.

Pursuant to the terms of Trust T, Taxpayer's one-half community property interest in IRA D will be allocated to Subtrust S. Further, pursuant to Taxpayer's authority under the terms of Subtrust S, Taxpayer intends to distribute the interest in IRA D held in Subtrust S to herself, in order to complete a rollover of the assets into one or more IRAs in her name.

Based on the preceding facts Taxpayer requests the following rulings:

1. Taxpayer, as Decedent's spouse, will be treated as having acquired Taxpayer's one-half community property interest in IRA D that is used to fund Subtrust S directly from Decedent, and not from Trust T;
2. Taxpayer is eligible to roll over her one-half community property interest in IRA D used to fund Subtrust S to one or more IRAs established and maintained in her name pursuant to section 408(d)(3)(A)(i), provided that the rollover occurs no later than 60 days after the proceeds of the IRA are distributed;
3. Taxpayer will not be required to include in gross income for federal tax purposes, for the year in which the distribution of IRA D is made, any portion of the proceeds distributed from IRA D that are timely rolled over to one or more IRAs, set up and maintained in Taxpayer's name; and
4. Subtrust S's receipt of the one-half community property interest in IRA D and the rollover of the one-half community property interest in IRA D to one or more IRAs set up and maintained in Taxpayer's name are not transfers within the meaning of section 691(a)(2).

With respect to your ruling requests, section 408(d)(1) provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72.

Section 408(d)(3) provides that section 408(d)(1) does not apply to a rollover contribution if such contribution satisfies the requirements of sections 408(d)(3)(A) and (d)(3)(B).

Section 408(d)(3)(A) provides that section 408(d)(1) does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the account is maintained

if: (i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which he receives the payment or distribution; or (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan for the benefit of such individual not later than the 60<sup>th</sup> day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the one-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in her gross income because of the application of section 408(d)(3).

Section 408(d)(3)(C)(i) provides, in pertinent part, that, in the case of an inherited IRA, section 408(d)(3) shall not apply to any amount received by an individual from such account (and no amount transferred from such account to another IRA shall be excluded from gross income by reason of such transfer), and such inherited account shall not be treated as an IRA for purposes of determining whether any other amount is a rollover contribution.

Section 408(d)(3)(C)(ii) provides that an IRA shall be treated as inherited if the individual for whose benefit the account is maintained acquired such account by reason of the death of another individual, and such individual was not the surviving spouse of such other individual.

Section 691(a)(1) provides that the amount of all items of gross income in respect of a decedent which are not properly includable in respect of the taxable period in which falls the date of her death or a prior period (including the amount of all items of gross income in respect of a prior decedent, if the right to receive such amount was acquired by reason of the death of the prior decedent or by bequest, devise, or inheritance from the prior decedent) shall be included in the gross income, for the taxable year received, of (A) the estate of the decedent, if the right to receive the amount is acquired by the decedent's estate from the decedent; (B) the person who, by reason of the death of the decedent, acquires the right to receive the amount, if the right to receive the amount is not acquired by the decedent's estate from the decedent; or (C) the person who acquires from the decedent the right to receive the amount by bequest, devise, or inheritance, if the amount is received after a distribution by the decedent's estate of such right.

Section 691(a)(2) provides that if a right, described in section 691(a)(1), to receive an amount is transferred by the estate of the decedent or a person who received such right by reason of the death of the decedent or by bequest, devise, or inheritance from the

decedent, there shall be included in the gross income of the estate or such person, as the case may be, for the taxable period in which the transfer occurs, the fair market value of such right at the time of such transfer plus the amount by which any consideration for the transfer exceeds such fair market value. For purposes of this paragraph, the term “transfer” includes sale, exchange, or other disposition, or the satisfaction of an installment obligation at other than face value, but does not include transmission at death to the estate of the decedent or a transfer to a person pursuant to the right of such person to receive such amount by reason of the death of the decedent or by request, devise, or inheritance from the decedent.

Section 1.691(a)-1(b) provides that the term “income in respect of a decedent” (IRD) refers to those amounts to which a decedent was entitled as gross income, but which were not properly includible in computing the decedent’s taxable income for the taxable year ending with the date of the decedent’s death or for a previous taxable year under the method of accounting employed by the decedent. Section 1.691(a)-1(c) provides that the term “income in respect of decedent” also includes the amount of all items of gross income in respect of a prior decedent, if (1) the right to receive such amount was acquired by the decedent by reason of the death of the prior decedent or by bequest, devise, or inheritance from the prior decedent and if (2) the amount of gross income in respect of the prior decedent was not properly includible in computing the decedent’s taxable income for the taxable year ending with the date of her death or for a previous taxable year.

Section 1.691(a)-4(a) provides that in general, the transferor must include in her gross income for the taxable period in which the transfer occurs the amount of the consideration, if any, received for the right or the fair market value of the right at the time of the transfer, whichever is greater.

Section 1.691(a)-4(b) provides that if the estate of a decedent or any person transmits the right to IRD to another who would be required by section 691(a)(1) to include such income when received in her gross income, only the transferee will include such income when received in her gross income. In this situation, a transfer within the meaning of section 691(a)(2) has not occurred.

Revenue Ruling 92-47, 1991-1 C.B. 198, holds that a distribution to the beneficiary of a decedent’s IRA that equals the amount of the balance in the IRA at the decedent’s death, less any nondeductible contributions, is IRD under section 691(a)(1) that is includible in the gross income of the beneficiary for the tax year the distribution is received.

In the present case, upon Decedent’s death IRA D passes to Trust T. Pursuant to the terms of Trust T, Taxpayer’s community property interests, including her one-half interest in IRA D, are to be allocated to Subtrust S. Under the terms of Subtrust S, Taxpayer, as trustee and sole beneficiary of Subtrust S, is entitled to receive all of the

income and principal of the assets held by Subtrust S (to which Taxpayer's one-half community property interest in IRA D will be allocated). For purposes of applying section 408(d)(3)(A) to IRA D, Taxpayer is effectively the individual for whose benefit IRA D is maintained. As such, Taxpayer is entitled to roll over the IRA D assets held in Subtrust S into one or more IRAs established and maintained in her name (other than those required minimum distribution amounts required to have been distributed under section 401(a)(9)).

Therefore, with respect to your ruling requests, we conclude that:

1. Taxpayer, as Decedent's surviving spouse, will be treated as having received the one-half community property interest in IRA D directly from Decedent and not from Trust T;
2. Taxpayer will be eligible to roll over the proceeds from Taxpayer's one-half community property interest in IRA D to one or more IRAs set up and maintained in her name pursuant to section 408(d)(3)(A)(i), as long as the rollover occurs no later than 60 days after the proceeds of the IRA are distributed ;
3. Subject to section 408(d)(3)(B), Taxpayer will not be required to include in gross income for federal tax purposes, for the year in which the distribution of Taxpayer's one-half community property interest in IRA D is made, any portion of the proceeds distributed from IRA D that are timely rolled over to one or more IRAs set up and maintained in Taxpayer's name; and
4. Subtrust S's receipt of the one-half community property interest in IRA D and the rollover of the one-half community property interest in IRA D to one or more IRAs set up and maintained in Taxpayer's name are not transfers within the meaning of section 691(a)(2); and pursuant to section 691(a)(1)(C), Taxpayer must include in her gross income, the amounts of IRD from IRA D when distributions are received by Taxpayer from the IRA(s) set up and maintained in her name.

Except as specifically provided herein, no opinion is expressed or implied concerning the federal tax consequences of any other aspects of any transaction or item discussed or referenced in this letter.

The rulings contained in this letter are directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party, as specified in Rev. Proc. 2020-1, 2020-1 I.R.B. 1, § 7.01(16)(b). This office has not verified any of the material submitted in support of the request for ruling, and such material is subject to verification on examination. The

Associate office will revoke or modify a letter ruling and apply the revocation retroactively if: there has been a misstatement or omission of controlling facts; the facts at the time of the transaction are materially different from the controlling facts on which the ruling was based; or, in the case of a transaction involving a continuing action or series of actions, the controlling facts change during the course of the transaction. See Rev. Proc. 2020-1, § 11.05.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

John T. Ricotta  
Branch Chief  
(Qualified Plans Branch 3)  
Employee Benefits, Exempt Organizations, and  
Employment Taxes

cc: